

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARCIA COLLINS)	
Claimant)	
VS.)	
)	Docket No. 186,974
CESSNA AIRCRAFT COMPANY)	
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from an Award entered by Administrative Law Judge John D. Clark on January 5, 1996. The Appeals Board heard oral argument April 10, 1996.

APPEARANCES

Claimant appeared by her attorney, Steven R. Wilson of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Kirby A. Vernon of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Orvel B. Mason of Arkansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded benefits based upon a 74.5 percent permanent partial general body disability and found the date of accident to be June 3, 1994. Consistent with the date of accident, the Administrative Law Judge found claimant's bilateral carpal tunnel syndrome to be, in effect, one injury and found that the Workers Compensation

Fund had no liability. On appeal, respondent challenges the finding as to the date of accident and argues the date of accident should be prior to July 1, 1993. If the date of accident were prior to July 1, 1993, the nature and extent of disability would be based upon different standards and, according to respondent, would be significantly less. Respondent also argues that the Administrative Law Judge erred in finding no Fund liability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds the Award by the Administrative Law Judge should be affirmed. The Appeals Board so finds for the reasons stated in the findings of fact and conclusions of law stated in the Award by the Administrative Law Judge. Specifically, the Appeals Board finds that the date of accident should be June 3, 1994. Although claimant had missed three days prior to July 1, 1993, she was off work for several months in the fall of 1993 because of her hand problems and ultimately quit work as of June 3, 1994. Claimant testified the condition worsened to that date. Claimant thereafter had surgery for bilateral carpal tunnel injury.

The Appeals Board also affirms the finding of 74.5 percent work disability. This is based upon the only doctor's testimony regarding loss of tasks and the fact that claimant has a 100 percent wage loss. There is no evidence to indicate that it would be appropriate to apply the principles of Foult v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

Finally, the Appeals Board agrees there is no basis for assessing any liability against the Kansas Workers Compensation Fund. Dr. Jones does give some testimony which respondent argues would support an award against the Kansas Workers Compensation Fund. The Appeals Board notes, however, that Dr. Jones admits that the percentages given were, in effect, a guesstimate. Dr. Jones also testifies that claimant had the same restrictions in October 1993 as he did after surgery for the carpal tunnel syndrome. The Appeals Board therefore agrees with the findings and conclusions of the Administrative Law Judge which, as indicated, are adopted and incorporated herein as the findings and conclusions by the Appeals Board.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark, dated January 5, 1996, should be, and the same is hereby, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Marcia L. Collins, and against the respondent, Cessna Aircraft Company, a qualified self-insured, for an accidental injury which occurred June 3, 1994, for 44 weeks of temporary total disability compensation at the rate of \$313 per week or \$13,772, followed by 275.49 weeks at the rate of \$313 per week for a 74.5% permanent partial disability, making a total award of \$100,000.

As of April 30, 1997, there is due and owing claimant 44 weeks of temporary total disability compensation at the rate of \$313 per week or \$13,772, followed by 107.71 weeks of permanent partial compensation at the rate of \$313 per week in the sum of \$33,713.23 for a total of \$43,463.18, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$52,514.77 is to be paid for 167.78 weeks at the rate of \$313 per week, until fully paid or further order of the Director.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be directly paid as follows:

Deposition Services	
Transcript of preliminary hearing	\$ 86.90
Barber & Associates	
Transcript of regular hearing	\$273.80
Deposition of Jerry D. Hardin	\$321.00
Deposition of Jay Stanley Jones, M.D.	\$296.80
Don K. Smith & Associates	
Deposition of Marcia Collins	\$217.00
Court Reporting Service	
Deposition of Karen Terrill	Unknown

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Kirby A. Vernon, Wichita, KS
Orvel B. Mason, Arkansas City, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director